

**Home School Non-Discrimination Act of 2005
(Introduced in Senate)**

S 1691 IS

109th CONGRESS
1st Session
S. 1691

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

IN THE SENATE OF THE UNITED STATES

September 13, 2005

Mr. CRAIG (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Home School Non-Discrimination Act of 2005'.

SEC. 2. FINDINGS.

Congress finds as follows:

- (1) The right of parents to direct the education of their children is an established principle and precedent under the United States Constitution.
- (2) Congress, the President, and the Supreme Court, in exercising their legislative, executive, and judicial functions, respectively, have repeatedly affirmed the rights of parents.
- (3) Education by parents at home has proven to be an effective means for young people to achieve success on standardized tests and to learn valuable socialization skills.

(4) Young people who have been educated at home are proving themselves to be competent citizens in postsecondary education and the workplace.

(5) The rise of private home education has contributed positively to the education of young people in the United States.

(6) Several laws, written before and during the rise of private home education, are in need of clarification as to their treatment of students who are privately educated at home pursuant to State law.

(7) The United States Constitution does not allow Federal control of homeschooling.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that--

(1) private home education, pursuant to State law, is a positive contribution to the United States; and

(2) parents who choose this alternative education should be encouraged within the framework provided by the United States Constitution.

SEC. 4. CLARIFICATION OF PROVISIONS ON INSTITUTIONAL AND STUDENT ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965.

(a) Clarification of Institutional Eligibility- Section 101(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)(1)) is amended by inserting `meeting the requirements of section 484(d)(3) or' after `only persons'.

(b) Clarification of Student Eligibility- Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended by striking the heading and inserting `Satisfaction of Secondary Education Standards'.

SEC. 5. CLARIFICATION OF ABSENCE OF CONSENT FOR INITIAL EVALUATION UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Section 614(a)(1)(D)(ii)(I) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(1)(D)(ii)(I)) is amended to read as follows:

`(I) FOR INITIAL EVALUATION- A local educational agency may pursue the initial evaluation of a child by utilizing the procedures described in section 615, except to the extent inconsistent with State law

relating to parental consent for an initial evaluation under clause (i)(I), only if the child is enrolled in public school or is seeking to be enrolled in public school.'.

SEC. 6. CLARIFICATION OF THE COVERDELL EDUCATION SAVINGS ACCOUNT AS TO ITS APPLICABILITY FOR EXPENSES ASSOCIATED WITH STUDENTS PRIVATELY EDUCATED AT HOME UNDER STATE LAW.

(a) In General- Paragraph (4) of section 530(b) of the Internal Revenue Code of 1986 (relating to qualified elementary and secondary education expenses) is amended by adding at the end the following new subparagraph:

“(C) SPECIAL RULE FOR HOME SCHOOLS- For purposes of clauses (i) and (iii) of subparagraph (A), the terms ‘public, private, or religious school’ and ‘school’ shall include any home school which provides elementary or secondary education if such school is treated as a home school or private school under State law.’.

(b) Effective Date- The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 7. CLARIFICATION OF SECTION 444 OF THE GENERAL EDUCATION PROVISIONS ACT AS TO PUBLICLY HELD RECORDS OF STUDENTS PRIVATELY EDUCATED AT HOME UNDER STATE LAW.

Section 444 of the General Education Provisions Act (20 U.S.C. 1232g; also referred to as the Family Educational Rights and Privacy Act of 1974) is amended--

(1) in subsection (a)(5), by adding at the end the following:

“(C) For students in non-public education (including any student educated at home or in a private school in accordance with State law), directory information may not be released without the written consent of the parents of such student.’;

(2) in subsection (a)(6), by striking ‘, but does not include a person who has not been in attendance at such agency or institution.’ and inserting ‘, including any non-public school student (including any student educated at home or in a private school as provided under State law). This paragraph shall not be construed as requiring an educational agency or institution to maintain education records or personally identifiable information for any non-public school student.’; and

(3) in subsection (b)(1), by striking subparagraph (F) and inserting the following:

` (F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if--

` (i) such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted; and

` (ii) for students in non-public education, education records or personally identifiable information may not be released without the written consent of the parents of such student.'.

SEC. 8. CLARIFICATION OF ELIGIBILITY FOR STUDENTS PRIVATELY EDUCATED AT HOME UNDER STATE LAW FOR THE ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM.

Section 419F(a) of the Higher Education Act of 1965 (20 U.S.C. 1070d-36(a)) is amended by inserting ` (or a home school, whether treated as a home school or a private school under State law)' after ` public or private secondary school'.

SEC. 9. CLARIFICATION OF THE FAIR LABOR STANDARDS ACT AS APPLIED TO STUDENTS PRIVATELY EDUCATED AT HOME UNDER STATE LAW.

Section 3(l) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(l)) is amended by adding at the end the following: ` The Secretary shall extend the hours and periods of permissible employment applicable to employees between the ages of 14 and 16 years of age who are privately educated at a home school (whether the home school is treated as a home school or a private school under State law) beyond such hours and periods applicable to employees between the ages of 14 and 16 years of age who are educated in traditional public schools.'.

SEC. 10. RECRUITMENT AND ENLISTMENT OF HOME SCHOOLED STUDENTS IN THE ARMED FORCES.

(a) Policy on Recruitment and Enlistment-

(1) IN GENERAL- The Secretary concerned shall prescribe a policy for the recruitment and enlistment of home schooled students in the Armed Force or Armed Forces under the jurisdiction of such Secretary.

(2) UNIFORMITY ACROSS THE ARMED FORCES- The Secretary of Defense shall ensure that the policies prescribed under paragraph (1) apply, to the extent practicable, uniformly across the Armed Forces.

(b) Elements- The policy under subsection (a) shall include the following:

(1) An identification of a graduate of home schooling for purposes of recruitment and enlistment in the Armed Forces that is in accordance with the requirements described in subsection (c).

(2) Provision for the treatment of graduates of home schooling with Tier I status with no practical limit with regard to enlistment.

(3) An exemption of graduates of home schooling from the requirement for a secondary school diploma or its recognized equivalent (GED) as a precondition for enlistment in the Armed Forces.

(c) Home School Graduates- In identifying a graduate of home schooling for purposes of subsection (b), the Secretary concerned shall ensure that the graduate meets each of the following requirements:

(1) The home school graduate has taken the Armed Forces Qualification Test and scored 50 or above.

(2) The home school graduate has provided the Secretary concerned with--

(A) a signed home school notice of intent form that conforms with the State law of the State where the graduate resided when the graduate was in home school; or

(B) a home school certificate or diploma from--

(i) the parent or guardian of the graduate; or

(ii) a national curriculum provider.

(3) The home school graduate has provided the Secretary concerned with a copy of the graduate's transcript for all secondary school grades completed. The transcript shall--

(A) include the enrollment date, graduation date, and type of curriculum; and

(B) reflect successful completion of the last full academic year of schooling from the home school national curriculum provider, parent, or guardian issuing the home school certificate or diploma or home school notice of intent form.

(4) The home school curriculum used by the home school graduate involved parental instruction and supervision and

closely patterned the normal credit hours per subject as used in a traditional secondary school.

(5) The home school graduate has provided the Secretary concerned with a third party verification letter of the graduate's home school status by the Home School Legal Defense Association or a State or county home school association or organization.

(d) Secretary Concerned Defined- In this section, the term 'Secretary concerned' has the meaning given such term in section 101(a)(9) of title 10, United States Code.